

CIVIL SERVICE COMMISSION MINUTES

DECEMBER 7, 2005

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
W. Dale Bailey
Cheryl Fisher

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
William Smith, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
December 20, 2005

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
DECEMBER 7, 2005

1:45 p.m. CLOSED SESSION: Room 400B, 1600 Pacific Highway,
San Diego, California

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
8,10,11,19		10	3,16,17,18

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Bailey. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Newman: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **Barbara
McGeorge**, former Human Resources Analyst, appealing a
Final Order of Removal and Charges from the Department of
Human Resources.

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)
William B. Kolender v. Civil Service Commission,
Superior Court Case No.: GIC 829866

OPEN SESSION AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda
items unless additional time is requested at the outset and
approved by the Commission President.

MINUTES

1. Approval of the Minutes of the regular meeting of November
2, 2005.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Bailey: Julie Buechler, Esq., on behalf of **2005-13**, appealing an Order from the Sheriff's Department.

Confirmed.

3. Commissioner Casillas: **Diana Strebler**, Office Support Specialist, appealing an Order of Suspension and Charges from the Probation Department.

Withdrawn.

4. Commissioner Newman: Solita Kampley, SEIU Local 2028, on behalf of **Christina Dinkins**, Records Clerk, appealing an Order of Suspension and Charges from the Probation Department.

Confirmed.

5. Commissioner Krauel: Solita Kampley, SEIU Local 2028, on behalf of **Servando Cruz**, Stock Clerk, appealing an Order of Suspension and Charges from the Sheriff's Department.

Confirmed.

6. Commissioner Bailey: Julie Buechler, Esq., on behalf of **2005-14**, appealing an Order from the Sheriff's Department.

Confirmed.

7. Commissioner Casillas: Solita Kampley, SEIU Local 2028, on behalf of **Jerry Simmons**, Medical Examiner Investigator II, appealing an Order of Suspension from the Office of the Medical Examiner.

Confirmed.

DISCIPLINES

Findings

8. Commissioner Newman: **Barbara McGeorge**, former Human Resources Analyst, appealing a Final Order of Removal and Charges from the Department of Human Resources.

Ms. McGeorge addressed the Commission regarding her observations and concerns regarding unrepresented employees during the hearing process.

FINDINGS AND RECOMMENDATIONS:

Appellant was a Human Resources Analyst in the Employee Benefits Division of the Department of Human Resources. She was removed from her position because of an incident that took place on February 18, 2005. It was undisputed that, while she was on Family Medical Leave and in a wheel chair, she brought her son into the restricted area of the Employee Benefits Division offices, to her work station, to retrieve some personal belongings and computer records. While there, her son inserted a "thumb drive" into her computer and then, when Department Management asked that he allow them to check it to ensure no confidential records were downloaded, he refused to relinquish it to them. He was rude and even violent to Department Management, twice intentionally pushing Appellant's wheel chair into the shins of a Department Manager when she attempted to block his and Appellant's exit from the offices with the thumb drive.

Appellant refused Management's request that she meet with them out of the presence of her son to discuss which computer records she wanted to retrieve. Additionally, she failed to attempt to control the conduct of her son. Appellant has been subject to counseling, poor performance appraisals, and prior discipline for issues involving attendance, tardiness, organization, quality of judgment, and discourteous communication with co-workers. At the Commission hearing, Appellant testified that she failed to direct her son's conduct because she was having a panic attack. She also testified she was only attempting to retrieve a log she was keeping of harassment by her co-workers and management. She presented evidence demonstrating that she was once a strong performer at work. She testified that she had undergone severe hardship during her employment including the deaths of a son and her husband, and a diagnosis of muscular dystrophy; and that these hardships profoundly affected her work performance. The Department's version of the incident was corroborated by the testimony of several eye-witnesses. Appellant brought no witnesses. She stated that her son, who was the only one who could have corroborated her testimony that he was acting without her approval, was unwilling to testify because he was embarrassed about his conduct in the incident. From the totality of the evidence, it appeared that her son was acting pursuant to her approval, if not express instruction. Moreover, the severity of the incident cannot be sufficiently mitigated by her hardships to warrant less than removal, especially given the County's policy of zero tolerance for work place violence. It is therefore recommended that the Department's Final Order of Removal and Charges, as amended, be affirmed, that the Commission read

and file this report, and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Commissioner Krauel stated that the evidence was not consistent with the finding of negligence in violation of Civil Service Rule 7.2.

Motion by Newman to approve Findings and Recommendations; seconded by Bailey. Carried.

AYES:	Casillas, Newman, Krauel, Bailey, Fisher
NOES:	Krauel (as to Cause I only)
ABSTENTIONS:	None
ABSENT:	None

Commissioner Newman commented that the Commission is extremely sensitive to the needs of all parties during the hearing process, including unrepresented appellants.

9. Commissioner Casillas: Everett Bobbitt, Esq., on behalf of **2004-02** - Supplemental decision in compliance with a Superior Court Judgment and Writ of Mandate regarding an April 7, 2004 Commission decision (former Commissioner Marc Sandstrom) relating to an appeal of an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

On April 7, 2004, the Commission approved a decision reducing the Sheriff's order of termination of Deputy 2004-02 to a 90-day suspension. The Sheriff sought court review of this order and ultimately prevailed in the Court of Appeal. The Commission was served with a Superior Court Judgment Granting Writ of Mandate and a Writ of Mandate, both dated November 18, 2005, ordering the Commission to set aside its order of April 7, 2004 and to enter a new order upholding the Sheriff's order of termination dated November 7, 2003, of Deputy 2004-02. Therefore, pursuant to the Writ of Mandate, the Commission orders that the Decision of the Commission dated April 7, 2004, in the matter of Deputy 2004-02 is set aside; that the Sheriff's Order of Termination and Charges, dated November 7, 2003, is affirmed; that the Commission read and file this report; and that a copy thereof shall be certified and served on the parties.

Item No. 9 approved on the Consent Agenda.

DISCRIMINATION

Complaints

10. **2005-15**, alleging non-job-related factor (retaliation) discrimination by the Sheriff's Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Both representatives spoke before the Commission regarding the merits of the complaint.

Staff recommendation approved. Commissioner Newman assigned.

LIBERTY INTEREST

Complaints

11. **2005-15**, requesting a Liberty Interest hearing.

RECOMMENDATION: Deny Request

John Mabeus, on behalf of 2005-15, briefly described appellant's work history, and further stated that he believes 2005-15 absolutely meets the requirements for a Liberty Interest Hearing.

Denise Reiber, on behalf of the Sheriff's Department, explained that employee was failed on probation for reasons other than misconduct. There has been no stigmatization to employee; employee can continue to work wherever he/she chooses, and in fact continues to work today. Ms. Reiber emphasized that mere failure of probation does not merit a Liberty Interest hearing.

Motion by Newman to approve staff's recommendation to deny employee's request for a Liberty Interest Hearing; seconded by Casillas. Carried.

SELECTION PROCESS

Findings

12. **Lacey Hoxie**, appealing the Department of Human Resources' (DHR) removal of her name from the employment list for Deputy Sheriff-Detentions/Court Services.

13. **Christine Barnard**, appealing the DHR's removal of her name from the employment list for Deputy Probation Officer.

14. **Sean Bove**, appealing the DHR's removal of his name from the employment list for Deputy Sheriff-Detentions/Court Services.

RECOMMENDATION: Ratify Item Nos. 12 - 14. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 12-14 Ratified.

OTHER MATTERS

Extension of Temporary Appointments

15. Health and Human Services Agency

3 Residential Care Workers II (Martha Castaneda, Shelly Hahne, Violeta Tapia)

RECOMMENDATION: Ratify

Item No. 15 ratified.

INFORMATION

16. Health and Human Services Agency withdrawal of a Letter of Disciplinary Transfer that was served on **Stacie Neldaughter**, Deputy Public Administrator-Guardian. (Commissioner Krauel)

Withdrawn.

17. **Stacie Neldaughter**, Deputy Public Administrator-Guardian, withdrawal of complaint alleging disability, sexual orientation and non-job-related factor discrimination by the Health and Human Services Agency. (Commissioner Bailey)

Withdrawn.

18. Douglas E. Geyman, Esq., on behalf of **Xieu M. Chrong**, former Paralegal II, withdrawal of appeal of a Final Order of Termination and Charges from the Office of the District Attorney. (Commissioner Krauel)

Withdrawn.

19. Public Input.

Stacie Neldaughter requested information regarding the qualification process which the County uses when screening medical providers.

ADJOURNED: 3:30 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: JANUARY 18, 2005